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*Attorneys for Defendants Select Comfort Wholesale Corporation,
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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

SLEEPY'S, LLC,

Plaintiff,

- against -

SELECT COMFORT WHOLESAL
CORPORATION, SELECT COMFORT RETAIL
CORPORATION and SELECT COMFORT
CORPORATION,

Defendants.

Civil Action No.

07 CV 4018 (Platt, J.)(Lindsay M.J.)

**DEFENDANT'S MOTION TO STRIKE
PLAINTIFF'S UNTIMELY AND
IMPROPER MEMORANDUM OF
LAW**

MOTION TO STRIKE

On February 29, 2012 Plaintiff filed a memorandum of law (Docket No. 692) in opposition to a motion properly brought by Defendant regarding an order issued by the Special Master on February 8, 2012. Plaintiff's filing is in direct contravention of the Order Appointing Special Master filed January 10, 2012 and the Federal Rules of Civil Procedure.

The Order Appointing Special Master provides a specific, agreed-upon procedure for the parties in dealing with any orders issued by the Special Master:

The parties may file objections to – or a motion to adopt or modify – the Special Master's order no later than 5 business days after a copy is served. The court will review these objections under the standards set forth in Fed. R. Civ. P. 53(f).

Order Appointing Special Master (Docket No. 648) at ¶ 6. The Order Appointing Special Master provides neither party the privilege of filing memoranda of law in opposition to the other party's objections to or motion to adopt or modify an order. Neither do the Federal Rules of Civil Procedure. Such a process would simply perpetuate an already extensive briefing, review and decision process on the parties' motions. The motions *in limine* underlying the Special Master's orders have already been extensively briefed. Both parties have already filed either objections to or motions to adopt or modify the February 8, 2012 order from the Special Master. Plaintiff's actions are nothing more than an improper attempt to file an unauthorized "reply" to Defendant's properly-filed motion. This will only serve to delay and confuse the multitude of issues already before the Court. Defendant respectfully requests that Plaintiff's February 29, 2012 memorandum of law be stricken from the docket and the Court's consideration.

Date: March 1, 2012.

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